REMARKS

I. Summary of the Examiner's Action

A. Claim Rejections

As set forth in page 2 of the March 6 Office Action, claims 1, 5 – 7 and 14 – 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Patent Application Publication No. 2004/0198366 to Crocker *et al.* (hereinafter "the Crocker application") in view of United States Patent Application Publication No. 2006/0002338 to Guo (hereinafter "the Guo application").

As set forth in page 10 of the March 6 Office Action, claims 2 – 4 and 8 – 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the Crocker application in view of the Guo application.

As set forth in page 10 of the March 6 Office Action, claims 11 – 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the Crocker application in view of the Guo application and further in view of United States Patent Application Publication No. 2004/0203948 to Provost *et al.* (hereinafter "the Provost application").

These rejections are respectfully disagreed with, and are traversed below.

II. Applicants' Response – Claim Rejections

A. Rejection of Claims 1, 5 – 7 and 14 – 20 under 35 U.S.C. § 103(a)

Applicants reproduce claim 1 (as amended) for the convenience of the Examiner here (emphasis added):

> 1. A method for establishing a wireless data transfer connection between a remote application and a controlling application, where the wireless link from the remote application is implemented by a wireless terminal connected to the remote application, the method comprising:
>
> arranging a group of allowable connection parameter settings in a pre-determined order, each connection parameter setting corresponding to a different service bearer;
>
> attempting to use a default connection parameter setting, wherein the default connection parameter setting corresponds to a default service bearer;
>
> detecting that the default service bearer is not usable to establish a wireless data transfer connection; and
>
> serially selecting another connection parameter setting for the wireless link from the group of allowable connection parameter settings in the pre-determined order one-after-another until a usable service bearer is found to perform the wireless data transfer.

Applicants respectfully submit that the claims prior to amendment were patentable over any of the art of record, whether taken singly or in combination, and respectfully reserve the right to pursue the claims in their pre-amendment state in one or more continuation applications. As amended, Applicants respectfully submit that the Examiner cannot

establish a *prima facie* case of obviousness based on the relied-upon references since the relied-upon references do not teach each and every limitation of claim 1.

In particular, as set forth in Applicants' prior responses, the Crocker reference describes a method where an alternate communications link is chosen in a wireless communications network based on network conditions when a default communications link fails. As described in Crocker, the first link is retried after connection condition factors are evaluated before a second link type is tried. If the second link type fails, the method reverts back to the first link type. *See* Crocker, FIG. 2 and para. 38. Guo describes a method where transmission power is incrementally increased until a desired data rate is achieved. Accordingly, at best, when combined, Crocker and Guo describe a system where an alternate communications link is chosen when a default communications link fails based on prevailing network conditions, and where transmission power of a functioning communications link is incrementally increased until a desired date rate is achieved. This combination does not establish a *prima facie* case of obviousness because it does not disclose each and every limitation of claim 1. For example, in Applicants' invention as claimed, connection parameters corresponding to service bearers are established in a pre-determined order to be used when a default service bearer is not usable to perform a wireless data transfer. Applicants' method avoids the delay incurred by Crocker associated with evaluating connection conditions and retrying links that have already failed. In contrast, in Applicants' invention when the default service bearer is not usable, alternate connection parameters are selected until a usable service bearer is found

to perform the wireless data transfer. The combination of Crocker and Guo simply does not describe or suggest this subject matter.

If the Examiner maintains that Guo teaches a method for selecting alternate communication links that can be substituted for the method disclosed in Crocker, he is in error. The Guo application simply discloses a method for adjusting transmission power until a desired data rate is achieved. It says nothing about selecting an alternate communications link when a default communications link fails.

If the Examiner argues that the method for adjusting transmission power described in Guo can be modified to select alternate communication links and then be substituted for the method described in Crocker, then the Examiner is again in error. Such a combination would be the epitome of handsight since it would credit subject matter only found in Applicant's application to the relied-upon prior art. Such a combination factually mischaracterizes the references and resulting combination as well, since the Guo application simply neither describes nor suggests that its methods for adjusting transmission power can be generally adapted to other communications situations, or specifically adapted to select alternate communications links when a primary communications link fails.

Applicants further submit that if the Examiner is correct that Guo does describe or suggest a method for selecting an alternate communications link when a primary link

fails (Applicants admit this only for the sake of argument and deny that Guo does so) then it would be improper to combine the references by substituting the method purportedly described in Guo for the method described in Crocker. In reply to Applicants' argument that it is improper to combine the teaching of Guo with Crocker because it would change the principle of operation of the primary Crocker reference, Examiner states at page 14, lines 6 – 22 of the March 6 Office Action:

> "In response to applicant's argument that it is improper to combine Guo with Crocker, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Both Crocker and Guo are in a wireless communications network and trying to establish a connection. Therefore, Crocker and Guo are combinable."

This statement is a *non sequitur / red herring* when compared to applicants' argument; misrepresents the teachings of the Guo application; and oversimplifies the suggestion to combine analysis at the heart of the obviousness determination. In particular, when Applicants argue that it is improper to combine the references since the combination would change the principle of operation of the primary reference, the Applicants admit for the sake of argument that it *is* possible to combine the teachings of the references. That is why Applicants challenge the *propriety* of the combination in this argument, not the *feasibility*. Accordingly, it is not a rebuttal for the Examiner to state that "the test for

obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference ..." The argument raised by Applicants presupposes that the teachings *can* be combined.

In addition, it is also not a rebuttal to argue that "the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art ..." This implies that Applicants' argument is not concerned with what the combined teachings would have suggested to those of ordinary skill in the art. This is not true. The analysis of whether the combination would change the principle of operation of the primary reference is concerned precisely with whether there is a suggestion to combine the references. The Applicants similarly argued that the combination was improper because it would render the primary reference unfit for its intended purpose. In discussing such an argument, the MPEP states "If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is *no suggestion or motivation* to make the proposed modification." MPEP 2143.01(V)(emphasis added). Similarly, if the proposed modification would change the principle of operation of the primary reference, there is no suggestion to combine the references. Accordingly, when Applicants raise these arguments, they are challenging the Examiner's conclusion regarding whether there is a suggestion to combine the references.

It should be kept in mind that these proscriptions are ways for giving life to the requirement that references must be considered in their entirety. In contrast to Examiners who sometimes lose sight of the "big picture" and become fixated on combining references that complete a checklist of claim elements, one skilled in the art when considering combinations would take into consideration the why and wherefore of the individual references. Hence, the proscriptions against combining references when the combination would change the principle of operation of the primary reference, or render the reference unsuitable for its intended purpose, are also useful tools for guiding an Examiner in his/her work.

Continuing, Examiner states that "Both Crocker and Guo are in a wireless communication network and trying to establish a connection." The relied-upon portion of Guo is *not* concerned with trying to establish a connection. The relied-upon portion of Guo is concerned with setting a power level that will meet data transmission requirements – not with establishing a connection. In fact, only Applicants and Crocker are concerned with establishing a connection. So it cannot be said that the reasons for adjusting transmission power in a particular manner have anything to do with reasons for selecting a particular way to establish/re-establish a connection.

As a result of the foregoing arguments, Applicants respectfully submit that claim 1 is patentable over any of the references of record, whether taken singly or in combination. Applicants therefore respectfully request that the rejection of claim 1 be

withdrawn. Applicants respectfully submit that independent claims 7, 15 and 18 – 20 are patentable over the art of record both for reasons similar to those set forth with respect to claim 1 and for reasons attributable to their independently-recited features. Applicants therefore respectfully request that the rejection of independent claims 7, 15 and 18 – 20 be withdrawn as well. Applicants further respectfully request that dependent claims 6, 14 and 16 – 17 are allowable as depending, either directly or indirectly, from allowable base claims.

B. Rejection of Claims 2 – 4 and 8 – 10 under 35 U.S.C. § 103(a)

Applicants respectfully submit that dependent claims 2 – 4 and 8 – 10 are allowable as depending, either directly or indirectly, from allowable base claims. Applicants therefore respectfully request that the rejection of these claims be withdrawn.

C. Rejection of Claims 11 – 12 under 35 U.S.C. § 103(a)

Applicants respectfully submit that the Provost application is not seen to remedy the deficiencies identified above respecting the combination of Crocker and Guo. Applicants therefore respectfully request that the rejection of claims 11 and 12 be withdrawn as these claims depend from allowable base claims.

IV. Conclusion

Applicants submit that in light of the foregoing remarks the application is now in condition for allowance. Applicants therefore respectfully request that the outstanding rejections be withdrawn and that the case be passed to issuance.

Respectfully submitted,

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Date

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